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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,814	10/22/2001	Takeshi Miyao	1743/189	2996

26646 7590 10/07/2005

KENYON & KENYON
ONE BROADWAY
NEW YORK, NY 10004

EXAMINER	
CHAVIS, JOHN Q	
ART UNIT	PAPER NUMBER
2193	

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/914,814	MIYAO ET AL.	
	Examiner	Art Unit	
	John Chavis	2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/189,181. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between the current application and '181 is the format of the claims. For example, both claim in claim 1 an operating system for managing a plurality of operating systems and both are now managed in a time-sharing manner '189 enable recording; while the present application has a unit for recording; '189 replaces alternately in a time-sharing manner; while this feature is inherent in the present application's switching; both requires a common computing unit in the body of '189 and in the preamble of the present application; '189 finds correspondence; while the present application searches for a reference (correspondence); and both finds a sequence of operation information.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Loucks (5,764,984).

Claims	Loucks
1. An operating system management system for managing a plurality of operating systems, the plurality of operating systems being replaced alternately and operated in a time-sharing manner, with some of said plurality of operating systems being operated as software of a common computing unit, comprising:	See the title and abstract.
a recording unit for recording operation information transferred from an operation information memory for storing an operation state of each of said operation information, obtained through a synchronization operation operating the plurality of operating systems at the same time during a time-shared switching operation thereof, and being assumed as a reference to other operation	See col. 2 lines 28-51.

information items corresponding to each other and regarded to have been generated approximately at the same time;	
a searching unit for searching operation information assumed as a reference to said other operating information items from said operation information items recorded in said operation information memories of said operating systems;	See col. 2 lines 66-67 and col. 5 lines 37-45. See also col. 3 lines 1-3, which inherently indicates that time is shared.
wherein said management system finds a sequence of other operation information items recorded in said operation information memories of said operating systems according to the correspondence to said searched operation information.	See col. 1 lines 56-67, col. 4 lines 7-27, fig. 3. and col. 3 line 65-col. 4 line 6.
the synchronization operation is recognizable in any of one of the operating systems; and	this feature is considered inherent in timesharing systems to enable the systems to cooperate with each other, see col. 6 lines 38-44.
a relative, temporal operation sequence of software operations of one of the operating systems and another one of the operating systems is found with reference to the synchronization operation.	It is not clear what the "temporal operation sequence" is relative to and it is also not clear where this feature is supported in the specifications. However, the feature is interpreted as the sequence of functions provided to enable inter-process communications between the systems to enable resource resolutions (timesharing), see col. 6 lines 14-17 and col. 5 lines 8-16.

As per claims 2-3, see the rejection of claim 1 above.

The features of claim 4 are inherent in claim 1 above to enable concurrent operations between the two operating systems.

In reference to claim 5, see the kernel features taught by Loucks, col. 5 lines 18-32.

As per claim 6, see the rejection of claim 1 in view of claim 4, as this is the essence of the dominant operating system (with built in control program) to control procedures and resolve issues between systems. Note also that time management is inherently performed via a counter function and that either system can be the dominant system and the features are provided for handling errors (logging), see col. 4 line 58-col. 5 line 16.

The features of claims 7-9, 11-17 are inherent in the task manager feature of Windows systems, see col. 5 lines 46-56. The features of claim 16 appear to contradict the features of the common computing unit of claim 1. Therefore, it is not clear what is intended and the claim is rejected as its parent claim.

It is not clear what is intended in claim 10 by having a control program provided on a side of the operating system closer to a computer; however, Loucks dominant personality is selectable (see col. 5 lines 37-45); therefore, the probability exists that one may be closer than another (whatever that means).

Conclusion

5. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Chavis whose telephone number is (571) 272-3720. The examiner can normally be reached on M-Th, 8:30am-5:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jqc
October 29, 2005

John Chavis
Primary Examiner AU-2193